

## **CHAPTER 337 (formerly 24) WETLANDS PROTECTION**

### **Section 337-1. Purpose (replace entire section)**

The purpose of this ordinance is protect the wetlands, and to maintain the quality of surface water, the quality and level of the ground water table and water recharge areas for existing or potential water supplies; to protect the public health and safety; to protect persons and property against the hazards of flood water inundation; to protect the community against the costs which may be incurred when unsuitable development occurs in or adjacent to resource areas; and to provide for the reasonable protection and conservation of certain irreplaceable natural features, resources and amenities for the benefit and welfare of the present and future inhabitants of the City of Northampton.

Accordingly, this ordinance protects the resource areas, and adjoining areas in the City of Northampton by prior review and control of activities likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public water supply, private water supply, groundwater, fisheries, wildlife, wildlife habitat, rare species habitat including rare plant species, recreation, agriculture, aesthetic values, flood control, erosion and sedimentation control, storm damage prevention, water quality, and prevention of water pollution; these values are to be known collectively as the "resource area values protected by this ordinance". This ordinance supplements the Wetlands Protection Act and is intended to utilize the Home Rule authority of this municipality to protect additional

resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations thereunder (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth of Massachusetts.

**Section 337-2. Jurisdiction (add to existing section)**

- g. Vernal Pool Resource Area shown in the table below. (See also definition.)

Zoning District and/or area of City	Vernal Pool Resource Area Size* There is no additional buffer zone around a Vernal Pool Resource Area
Central Business, General Business, Neighborhood Business, Highway Business, General Industrial, Special Industrial, Planned Village, Medical, Urban Residential-B and Urban Residential-C and municipal landfill properties.	Vernal Pool and areas within 100 feet of the vernal pool
Non-residential uses only in the Business Park District.	Vernal Pool and areas within 100 feet of the vernal pool
All areas in the Water Supply Protection overlay which were zoned residential as of 1/1/2006.	Vernal Pool and areas within 200 feet of the vernal pool
All other areas not shown above (residential uses in the Business Park District, Rural Residential, Suburban Residential, Special Conservancy, Urban Residential A).	Vernal Pool and areas within 200 feet of the vernal pool

### **Section 337-3. Definitions (replace Buffer Zone Definition and add to existing section)**

Buffer Zone: means that area of land extending 100 feet horizontally (forty feet for lands subject to flooding) from the boundary of the resource areas defined in Section 337-2.

Certified Vernal Pool: The term “Certified Vernal Pool” shall apply to all Certified Vernal Pools plotted by the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program’s “Estimated Habitats of Rare Wetlands Wildlife and Certified Vernal Pools Map.”

The Natural Heritage and Endangered Species Program plots the geographic location of Certified Vernal Pools, however, applicants are required to delineate the boundary of the Certified Vernal Pool, which shall be reviewed by the Northampton Conservation Commission.

Presumed Vernal Pool: The term “Presumed Vernal Pool” shall apply to all confined basin depressions which, at least in most years, hold water for a minimum of two continuous months during the spring and/or summer, and are free of adult fish populations, and are at least one-thousand (1000) square feet in area. A Presumed Vernal Pool shall no longer be considered as a Presumed Vernal Pool if rebutted under Section 337-10.

Vernal Pool Resource Area: The term “Vernal Pool Resource Area” shall include the Certified Vernal Pool, Presumed Vernal Pool and an area, as described in the table in Section 337-2, extending laterally from the mean annual high-water line defining the depression, but shall not include existing lawns, gardens, and landscaped or developed areas. There is no additional buffer zone around a Vernal Pool Resource Area. Presumed Vernal Pools shall be protected as a Vernal Pool Resource Area until and unless the presumption is rebutted under section 337-10.

Seasonal Wetlands: The term “Seasonal Wetlands” shall include all confined basin depressions which, at least in most years, hold water for a minimum of two continuous months during the spring and/or summer, and are free of adult fish populations, and are less than one-thousand (1000) square feet in area, but larger than thirty (30) square feet in area.

Except as permitted by the Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon, or alter Seasonal Wetlands or within 100 feet of Seasonal Wetlands.

### **Section 337-4. Exceptions (add to existing section)**

Those “Jurisdiction,” “Performance Standards” and “Definition” requirements that are over and above state law shall not apply to City of Northampton Municipal Landfills.

#### **Section 337-4(B) Exceptions (Replace part B)**

B. Notwithstanding the definition of "alter" (§ 337-3) the application and permit required by this chapter shall not be required for detention basins, catch basins, manholes, and dropped inlets that discharge into an existing pipe nor for maintaining, repairing, or replacing, but not changing or enlarging, an existing or lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunications services, sanitary sewers and storm sewers, provided that the structure or facility is not changed or enlarged, provided that written notice has been given to the Commission at least 48 hours prior to commencement of work, and provided that the work conforms to

performance standards in or cited by this chapter.

### **Section 337-6. Public Notice and Hearings (replace entire section)**

An application for any wetland permit (Notice of Intent, Request for Determination of Applicability, or Abbreviated Notice of Resource Area Delineation) shall be hand delivered or sent by certified mail, return receipt, or certificate of mailing to the Conservation Commission, care of the Northampton Office of Planning and Development. Said applicant shall give written notice to the owner if other than the applicant and, with the exception of a Request for Determination of Applicability, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and other property owners within 100 feet of the property line of the applicant, including any in another municipality or across a body of water. The Notice to Abutters shall state where copies of the application or request may be examined and obtained by abutters and shall state where information on the date and time of the public hearing may be obtained. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission as part of the application.

After the application/request is received, the applicant shall place an 11"x 17" canary yellow laminated sign, with one-inch black lettering, facing a public right-of-way and visible from the right-of-way at the edge of the property upon which the permit or request is being made. Said sign shall notify the public that an application or request is pending on the property. Said sign shall be posted at least five (5) working days before the first public hearing on the application or request.

A signed statement of the person posting said sign stating that the required sign was provided shall be filed with the Commission prior to the public hearing.

The Commission shall conduct a public hearing on any application, Notice of Intent, Abbreviated Notice of Resource Area Delineation (ANRAD), or Request for Determination of Applicability. Notice of said hearing shall be published in a newspaper of general circulation in the City at least five (5) working days prior to said hearing. The published notice, which shall be prepared by the Commission, shall contain the following information: the date, time, and place of the hearing; the location of the property affected; the name of the applicant; and the action requested from the Commission. The Commission shall deliver the notice to the newspaper.

The Commission shall commence the public hearing within twenty-eight (28) days from receipt of a completed application (one which shows all the information, based on a staff determination, necessary to make a decision), unless the applicant extends the time period by a written waiver.

The Commission shall have authority to continue the hearing to a date and time announced at the hearing for reasons stated at the hearing, which may include the receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission, or comments and recommendations of other boards and officials of the City of Northampton. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

In addition, when there is snow on the ground and/or the ground is frozen the Commission may continue a hearing until the snow melts and/or the ground thaws if it determines that an accurate wetland delineation is not possible otherwise.

The Commission shall issue its permit, permit denial, or determination in writing within twenty-one (21) days of the close of the public hearing, unless an extension is authorized in writing or at the public hearing by the applicant.

The Commission shall combine its hearing under this ordinance with the hearing conducted under the Wetlands Protection Act, G.L. Ch. 131, §40, and Regulations, 310 CMR 10.00 in instances of concurrent jurisdiction.

**Section 337-10. Performance Standards (replace entire section and add to existing section)**

1. All work shall be subject to inspection and require the approval of the Conservation Commission.
2. To encourage infill development, which is considered more sustainable under the principals of smart growth and generally has a smaller environmental footprint than development in outlying areas, in the Central Business, General Business, Highway Business, Neighborhood Business, General Industrial, Special Industrial, Planned Village, Medical, Urban Residential-B and Urban Residential-C zoning districts, within those portions of the Water Supply Protection overlay district which was zoned industrial as of 1/1/2006, the Conservation Commission hereby waives any of the Section 337-10 performance standards that are over and above state law with the exception of the setback requirements in Table (1). The reduced setback requirements in Table (1) shall apply.
3. To encourage infill development, which generally has a smaller environmental footprint than development in outlying areas, in the Business Park zoning district for non-residential uses only, the Conservation Commission hereby waives any of the Section 337-10 performance standards that are over and above state law, except as provided in this paragraph. All removal, filling, dredging, or altering of any wetland shall be mitigated by the creation of artificial or replacement wetlands, with the replacement wetland built at one hundred and fifteen (115) percent of the size of the area which was disturbed.
4. Artificial or Replacement Wetlands: If the applicant demonstrates to the Commission that the replacement wetland is a restoration and will provide wetland values equal or greater than the wetland values being lost, the Commission may allow replacement wetlands to be the same size as the disturbed area. If the applicant is attempting to replace a wetland through replication, the area of replication must be up to twice as large as the area of the original wetland that will be destroyed. In those instances where replication is approved by the Commission the following conditions must be met:
  - A. At minimum the replicated wetland must reproduce the values and functions of the original wetland as determined by the Conservation Commission. Site conditions permitting, the Commission may require that additional values and functions be incorporated into the replication design. In particular, in circumstances where replacement of specific functions and values would require substantial amounts of time before being completely replicated (for example, those provided by large mature trees) the Commission may require additional compensation of area, functions, values, etc. beyond those required in other sections of this Ordinance.

- B. In most instances the replication of wetlands will result in the destruction of adjacent buffer zone areas. In such instances, replication or additional permanent preservation of new buffer zone areas may be required.
- C. The top 12" of soil from the original wetland must be transplanted with soil structure – especially lamination and density profile – intact to the replication area. This is intended to preserve plant, invertebrate, and planktonic communities of the wetland and inhibit the blossoming of invasive species.
- D. Any replication or restoration work that creates a resource on abutting properties shall require an easement from the abutting property owner covering the full extension of the resource on that property prior to commencement of the work.
- E. Standards for the replication shall be specified and verified in terms of functions, values, and actual performance. Technical and engineering specifications used for design and construction shall be considered approximate. Criteria for acceptance and approval shall be based solely on function and performance as specified in the Order of Conditions. In other words replications will be evaluated on what they are expected to do, not how closely actual construction matched the plan. For example, although elevations may be used for design and planning of a pond, the standards shall be set in terms of volume and depth of water over the course of a year. In vernal pool replication the pool must be capable of sustaining full development of vernal pool species, regardless of design elevations or siting.
- F. Replications that do not properly perform the approved functions and values as specified in the order of conditions will not be deemed acceptable no matter how closely they adhere to approved engineered plans.
- G. The Commission may set other conditions on a project/site specific basis.
- H. For limited development projects, as defined in the wetlands protection act regulations, where it is not be practical to layout an element of the project without a wetlands replication, the Commission may waive some or all of the requirements of this section.

5. Work Within Upland Areas Adjacent to Wetlands

A growing body of research evidence suggests that even “no disturbance” areas reaching 100 feet from wetlands may be insufficient to protect many important wetland resource characteristics and values. Problems with nutrient runoff, erosion, siltation, loss of groundwater recharge, poor water quality, vegetation change and harm to wildlife habitat are greatly exacerbated by activities within 100 feet of wetlands. These impacts may happen either immediately, or over time, as a consequence of construction, or as a consequence of daily operation. Thus, in general, work and activity within 100 feet of wetlands should be avoided and discouraged and reasonable alternatives pursued.

- A. Certain areas 50 to 100 feet from wetlands may be suitable for temporary, limited or permanent disturbance as appropriate when the applicant can demonstrate to the Commission’s satisfaction that the proposed work, activity or use will not affect wetland values singularly or cumulatively and, by means of a written and plan view assessment, that reasonable alternatives to the proposed work or activity do not exist.
  - 1. The Commission may allow the alteration of up to 20% of the area within the 50-100’ buffer zone on a lot, or up to 2,000 square feet on a lot within a cluster subdivision. This is a total, cumulative allowance for all projects on a lot developed since the City first adopted a wetlands protection ordinance (8/17/1989). The proposed work must have no significant

adverse impact on the resource area, and the applicant must provide evidence deemed sufficient by the Commission that the area being disturbed will not harm the resource area values protected by the law.

- B. The City's general policy is no encroachment within 50 feet of wetlands. The Commission may allow work within the 50-foot non-encroachment zone in response to a written request for a waiver, which shall include a written and plan view assessment as part of the application process as follows:
1. Projects in areas down-gradient of wetlands and projects in areas already degraded by impervious surfaces from existing structures or pavement.
  2. Projects in certain infill areas, in accordance with Table-(1) in Section 337-10, where development includes mitigation measures that will improve the existing condition of the wetlands or adjacent upland area and is otherwise permissible under the Massachusetts Wetlands Protection Act.
  3. Limited development projects, as defined in the Massachusetts Wetlands Protection Act Regulations

Table-(1)

Zoning District	No Encroachment Zone
Central Business, General Business, Neighborhood Business, General Industrial, Special Industrial, Planned Village, Medical	10 feet from wetlands
Urban Residential-B and Urban Residential-C.	35 feet from wetlands 10 feet from wetlands may be allowed at the discretion of the Conservation Commission if applicant provides extraordinary mitigation, replication, restoration or open space preservation measures
All Water Supply Protection overlay areas zoned residential as of 1/1/2006, regardless of the underlying zoning, and all other areas	Only in conformance with the performance standards of this ordinance.

\* *Business Park - See Section 337-10(3)*

#### Work within the Vernal Pool Resource Area

- A. The City of Northampton Conservation Commission may issue an Order of Conditions for the construction, rehabilitation and maintenance of linear systems within the Vernal Pool Resource Area, but not within the vernal pool (although no such project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species). Linear systems include, but are not limited to: footpaths, bikepaths, pipelines, and conduits for the transmission of utilities (water, fuel, sewage, and power). Evaluation of such projects shall be based on the applicant's ability to avoid, minimize, and mitigate disturbance to the resource area. With the exception of existing linear systems, the applicant shall avoid disturbance in the resource area. The applicant must prove to the Conservation Commission, beyond a reasonable doubt, that

avoidance is not possible. If avoidance is not possible, the applicant must provide documentation that any adverse impacts from the work will be minimized and that the design specifications are commensurate with the projected use and are compatible with the character of the Vernal Pool Resource Area. In the exercise of this discretion, the issuing authority shall consider the magnitude of the alteration and the significance of the project site to the interests identified in Section 337-1 of the City of Northampton Wetlands Ordinance, the availability of reasonable alternatives to the proposed activity, the extent to which adverse impacts are minimized, and the extent to which mitigation measures, such as resource area replication, habitat restoration, and open space preservation are provided to contribute to the protection of the interests identified in Section 337-1 of the City of Northampton Wetlands Ordinance.

- B. The City of Northampton Conservation Commission may issue an Order of Conditions for the construction of a driveway crossing within the 100-200 ft section of the Vernal Pool Resource Area (although no such project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species). Such projects may be permitted if the applicant provides evidence that the work will not cause adverse impacts to the Vernal Pool Resource Area. In the exercise of this discretion, the issuing authority shall consider the magnitude of the alteration and the significance of the project site to the interests identified in Section 337-1 of the City of Northampton Wetlands Ordinance, the availability of reasonable alternatives to the proposed activity and the extent to which mitigation measures, including resource area replication, habitat restoration, and open space preservation are provided to contribute to the protection of the interests identified in Section 337-1 of the City of Northampton Wetlands Ordinance.
- C. The City of Northampton Conservation Commission may issue an Order of Conditions for the rehabilitation and maintenance of existing structures and disturbed areas (structures or disturbed areas existing as of 01/01/2006) within the Vernal Pool Resource Area, but not within the vernal pool (although no such project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species). Such projects may be permitted if the applicant provides evidence that the work will not cause additional impacts to the Vernal Pool Resource Area. In the exercise of this discretion, the issuing authority shall consider the magnitude of the alteration and the significance of the project site to the interests identified in Section 337-1 of the City of Northampton Wetlands Ordinance, the availability of reasonable alternatives to the proposed activity and the extent to which mitigation measures, including resource area replication, habitat restoration, and open space preservation are provided to contribute to the protection of the interests identified in Section 337-1 of the City of Northampton Wetlands Ordinance.

#### Vernal Pool Habitat

The presumptive definition for vernal pools is based on systematic field observations in the City of Northampton by the Northampton Conservation Commission and shows that virtually all basins that possess the defined characteristics actually host breeding vernal pool species. Undoubtedly this is a particular consequence of Northampton's enduring woodlands and wetlands.

Any ponded area located within a confined basin depression and containing more than 1,000 square feet of water during the growing season shall be presumed to be vernal pool habitat. This presumption is rebuttable through any of the following means:



- Demonstration that surface water was present for less than 60 consecutive days during the growing season (March 15 – October 15) of any years, provided that rainfall during the period of observation was at least 75% of the average over twenty (20) years for that period in Northampton.
- Proof that the ponded area either supports a year-round population of fish or that the fish breed within the confines of the ponded area.
- Demonstration, through repeated observation by competent field observers made during the spring months, that the ponded area did not meet the criteria for certification as vernal pool habitat as described in the “Guidelines for the Certification of Vernal Pool Habitat” of the Massachusetts Division of Fisheries and Wildlife. For such evidence to be considered sufficient and accurate a vernal pool observation plan must be approved by the Northampton Conservation Commission prior to February 15th of the spring in which the study will be conducted and staff or agents of the Commission must be granted access to the site as necessary.

If a Presumed Vernal Pool is located entirely on an adjacent property not owned or controlled by the applicant, the applicant and Conservation Commission must attempt to gain permission from the adjacent property owner to access the property to inspect the Presumed Vernal Pool. If said permission is not granted, and the Presumed Vernal Pool cannot be certified from observations made at the property boundary line, the Northampton Conservation Commission will not assert regulatory jurisdiction over the area of upland Vernal Pool Resource Area on the applicant’s property.

If a property owner grants permission by February 15<sup>th</sup> of any year, the Northampton Office of Planning and Development or its agent will inspect and certify vernal pools (usually in the spring of each year). The City or its agent will then either certify eligible vernal pools with the Commonwealth of Massachusetts or provide a statement that an inspected Presumed Vernal Pool is not actually a Certified Vernal Pool in accordance with the necessary credible evidence as required. A statement that a site is not a vernal pool shall be presumptive under this ordinance for three years but does not indicate that it is not otherwise a resource area. The fee for this work shall be made payable to the City or its agent, as applicable, and shall be the same fee as being charged for the Massachusetts Department of Environmental Protection Notice of Resource Area Delineation.